IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

S.T.APPEAL No.7 of 2007

(AGAINST ORDER R2.27471/2006/CT DATED 7.2.2007 OF THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM)

APPELLANT:-

V.SIDDIQUE, S/O.EBRAHIMKUTTY,
VARIKKODAN HOUSE, PERUNTHALMANNA,
MALAPPURAM DISTRICT.

BY ADV. SRI.BOBBY JOHN
SRI.P.N.DAMODARAN NAMBOODIRI

RESPONDENT:-

STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER (TAXES) SRI.V.V.ASHOKAN.

THIS SALES TAX APPEAL HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

H.L. Dattu, C.J. & K.T. Sankaran, J.

S.T.Appeal No.7 of 2007

Dated, this the 24th day of May, 2007

JUDGMENT

H.L.Dattu,C.J.

Sri.V.V.Ashokan, learned Special Government Pleader (Taxes) is directed to take notice for the respondent and he is permitted to file his memo of appearance within six weeks from today.

2. Since the issue raised in the appeal lies in a narrow compass, with consent of counsel on both sides, the matter is taken up for final hearing.

3. In this appeal filed under Section 40 of the Kerala General Sales Tax Act, the appellant is calling in question the legality or otherwise of the order passed by the revisional authority in Case No.R2.27471/2006/CT dated 7.2.2007. By the impugned order, the revisional authority has set aside the orders passed by the first appellate authority and has confirmed the orders passed by the Intelligence authority in imposing a penalty of Rs.1,08,558/-.

4. At the time of hearing of the appeal, learned counsel appearing for the appellant, apart from other contentions, submits that the revisional authority without considering any one of the objections raised by the appellant in the reply filed by him to the show cause notice issued by the revisional authority has restored the order of penalty and, therefore, the order is bad, illegal, invalid and arbitrary.

5. The revisional authority had issued notice under Section 37 of the Act, *inter alia*, directing the petitioner to show cause why the orders passed by the first appellate authority should not be revised and the orders passed by the Intelligence authority should not be restored.

6. After receipt of the said show cause notice, the appellant has filed his detailed reply, *inter alia*, contending that the appellant is not responsible for the violation of the provisions of the Kerala General Sales Tax Act, in particular Section 29 of the Act.

7. The revisional authority without adverting to any one of the defence raised by the appellant, has proceeded to pass an order upsetting the orders passed by the first appellate authority and restoring the orders passed by the Intelligence authority.

8. The purpose of issuing a show cause notice to an assessee is to ask him why the orders passed by a particular authority should not be annulled or modified and why the orders passed by the Intelligence authority should not be restored. The appellant had filed his detailed reply, raising several objections. Since the appellant has filed objections, the revisional authority should have considered the objections so filed and then only should have passed an order under Section 37. In the instant case, the revisional authority has not done that exercise. This action of the revisional authority, in our opinion, is arbitrary and illegal. Therefore, we cannot sustain the impugned order passed by the revisional authority. Accordingly, the following:

Order

(i) The order passed by the revisional authority in Case

No.R2.27471/2006/CT dated 7.2.2007 is set aside.

(ii) The matter is remanded back to the revisional authority with a direction that the revisional authority shall consider the objection filed by the appellant to the show cause notice issued by him.

(iii) The revisional authority shall also afford an opportunity of hearing to the appellant before passing any order.

With these observations and directions, this appeal is disposed of. Consequently, I.A.No.1113 of 2007 shall stand dismissed.

H.L.Dattu,
Chief Justice.

K.T.Sankaran,
Judge.

vku/DK